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IN THE

Supreme Court of the United States

January Term, 1970

CHESTNUT HILL CO., a Washington corporation;
DELTA REHABILITATION CENTER, INC.,
a Washington corporation,
Petitioners,

v.

CITY OF SNOHOMISH, a municipal corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of the State of Washington

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METROPOLITAN PRESS — SEATTLE, WASH.

SUBJECT INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Constitutional Provisions	2
Statement of Facts	2
Reasons for Granting the Writ	5
Conclusion	10
Appendices	
Appendix A	A-1

TABLES OF AUTHORITY

Table of Cases

Faxe v. Grandview,
48 Wn.2d 342, 294 P.2d 462 (1956) 8

Interstate Commerce Commission v. Louis. & Nash. R.R.,
227 U.S. 88, 57 L. ed. 431, 33 S. Ct. 185 (1913) 5-6

Mills v. Town Plan and Zoning Commission of the Town of Windsor,
144 Conn. 493, 134 A.2d 250 (Conn. 1957) 7-8

St. Joseph Stock Yards Co. v. U.S., 298 U.S. 38 (1938).. 9

Saks & Co. v. City of Beverly Hills et al.,
107 C.A.2d 260, 237 P.2d 32 (Cal. 1951) 7

Shields v. Utah Idaho Central Railroad,
305 U.S. 177, 83 L. ed. 111, 59 S. Ct. 160 (1938) 5

Smith v. Skagit County,
75 W.D.2d 729, 453 P.2d 831 (Wash. 1969) 6, 7

Page

State of Washington ex rel. Seattle Trust Company v. Roberge, 278 U.S. 116, 73 L. ed. 210, 495 S. Ct. 50 (1928) 5

The State of Washington on the relation of John C. Beam v. F. Sylvin Fulwiler et al., 76 W.D.2d 471, 456 P.2d 322 (1969) 6

Constitutional Provisions

United States Constitution:

Fourteenth Amendment 2, 5

Fourteenth Amendment, Section 1 2

Washington State Constitution, Article I, Section 12 8

Statutes

R.C.W. 35.63.100 5

.120 5

28 U.S.C. Section 1257(3) 2

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CITY OF SNOHOMISH, a municipal corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of the State of Washington

The petitioners, Chestnut Hill Company and Delta Rehabilitation Center, Inc., pray a Writ of Certiorari issue to review the opinion and judgment of the Supreme Court of the State of Washington *en banc* rendered in these proceedings on September 18, 1969, and denied a petition for rehearing on October 30, 1969. See 76 W.D.2d 909, 457 P.2d 891 (October 1969).

OPINIONS BELOW

The opinion of the Supreme Court of the State of Washington appears in Appendix A, *infra,* page A-1. There was no written opinion on the denial of the petition for rehearing.

JURISDICTION

The denial of the petition for rehearing by the Supreme Court of the State of Washington being denied on October 30, 1969, this petition for certiorari was filed less than 90 days from the aforesaid date. The jurisdiction of this court is invoked under 28 U.S.C. Section 1257 (3).

QUESTIONS PRESENTED

Did the City deny a fair hearing to petitioners in violation of the due process clause of the Fourteenth Amendment of the United States Constitution by appointing a Planning Commissioner to hear and vote on petitioners request when the City knew the Commissioner to be prejudiced, hostile and antagonistic and who while sitting as Commissioner vigorously argued against petitioners request at the Commission hearing.

CONSTITUTIONAL PROVISIONS

The Constitution of the United States, Amendment XIV, Section 1, is in part as follows:

> ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

Petitioners owned and operated a nursing home since 1955, situated on 20 acres of ground adjoining the outskirts of the City of Snohomish, in Snohomish County, Washington. The City of Snohomish is a city of the third class, with a population somewhat less than 5,000 people. Petitioners were voluntarily annexed to the City of Sno-

homish on May 4, 1965. On July 1, 1964, the City of Snohomish had adopted a zoning ordinance and within the terms of such ordinance provided for a Planning Commission to carry on the usual and appropriate functions of such a commission, and it was the function of that Planning Commission to provide a recommendation on the zoning of petitioners' property. At the time of annexation, a local citizen by the name of K. F. Schilaty announced at the hearing before the City Council that he was opposed to the petitioners continuing a nursing home business on the property and later, for public information, announced a plan to purchase the property and develop it for homes.

Petitioners' zoning hearing was set for June 3, 1965, before the Planning Commission. On June 1, the Mayor with the approval of the City Council appointed Mr. Schilaty to the Planning Commission to sit in judgment on petitioners' request for an R-3 or unrestricted zoning. Mr. Schilaty as Commissioner not only lived across the street from petitioners' nursing home but was known and recognized as being hostile and antagonistic to petitioners. Effort was made to disqualify Mr. Schilaty, without success. He sat on the Planning Commission, hearing petitioners' application and, in the course of the proceeding argued vehemently against the conduct of petitioners' nursing home and sought to place it in an R-1 zoning category, a nonconforming use. The restrictive zoning of an R-2 zone was determined by the Planning Commission, which had the effect of making the property a nonconforming use. The Commission's recommendation was made to the City Council, which ultimately decided upon a more restrictive use on the front portion of the property

as an R-1 zone, and the remainder, including the nursing home, as recommended by the Planning Commission.

The uncontroverted facts relative to Mr. Schilaty, who was appointed by the City to act as a Planning Commissioner, are briefly outlined as follows:

He lived directly across the street from petitioners' nursing home. He was known by the City Council and by the City generally to be antagonistic and hostile to the continuance of petitioners' nursing home business. He tried on several occasions during the progress of the hearings to purchase the property from the petitioners for the purpose of developing the area for homes. At the Planning Commission Hearings, he vigorously argued for a nonconforming restricted use and fought to prevent unrestricted zoning of petitioners' property. He subsequently appeared before the City Council and publicly argued against petitioners. He went about the city organizing groups to oppose petitioners. He did all of the foregoing while a member of the Planning Commission and a member of the City official family.

The Superior Court for Snohomish County upheld the action of the City, and an appeal was taken to the Supreme Court of the State of Washington. The Supreme Court upheld the decision of the Superior Court. It was contended at both court levels that under the circumstances existing in the City of Snohomish, it was impossible to have a fair hearing, and the petitioners' were deprived of valuable property rights without due process of law.

REASONS FOR GRANTING THE WRIT

1. The decision below directly conflicts with the due process provision of the Constitution and the principles announced by this court.

The zoning law of Washington has provided in R.C.W. Section 35.63.100 and 35.63.120, and in the City of Snohomish Ordinance, a requirement for a public hearing before the Planning Commission. The hearing granted with a biased and prejudiced member of the Planning Commission was a denial of due process in violation of the 14th Amendment.

Zoning of property is authorized by law and is, nevertheless, an impairment of a valuable property right, and those rights and the hearing thereon therefore, must be carefully protected. *State of Washington ex rel. Seattle Trust Company v. Roberge,* 278 U.S. 116, 73 L. ed. 210, 495 S. Ct. 50 (1928).

In *Shields v. Utah Idaho Central Railroad,* 305 U.S. 177, 83 L. ed. 111, 59 S. Ct. 160 (1938), in referring to the hearings before the Interstate Commerce Commission, this court said:

> ". . . The requirement of a 'hearing' has obvious reference to 'the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts.' The 'hearing' is 'the hearing of evidence and argument.' *Morgan v. United States,* 298 U.S. 468, 480. And the manifest purpose in requiring a hearing is to comply with the requirements of due process upon which the parties affected by the determination of an administrative body are entitled to insist."

In *Interstate Commerce Commission v. Louis. & Nash.*

R.R., 227 U.S. 88, 57 L. ed. 431, 33 S. Ct. 185 (1913), this court stated:

> "In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasijudicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence.'" (Many cases cited.)

The Supreme Court of the State of Washington cited the above case in the late case of *The State of Washington on the relation of John C. Beam v. F. Sylvin Fulwiler et al.*, 76 W.D.2d 471, 456 P.2d 322 (1969), involving a hearing before the Civil Service Commission in the City of Spokane. In referring to the hearings provided for by the Civil Service Commission, that court had this to say:

> ". . . Implicit in such provisions is that such a hearing shall be fair and impartial, and before an unbiased tribunal. Such protections are inherent in the word 'hearing' and without them hearing procedures could be seriously infected. See *Interstate Commerce Commission v. Louisville & Nashville R.R.*, 227 U.S. 88, 57 L. ed. 431, 33 S. Ct. 185 (1913). These protections, and the concepts of fundamental fairness they project are inherent in the notions of 'administrative due process' and have been recognized by this court as late as *Smith v. Skagit County*, 75 W.D.2d 729, 453 P.2d 832 (1969). In fact, as early in the history of this court as 1898, we acknowledged that 'the principle of partiality, disinterestedness, and fairness on the part of the judge is as old as the history of courts; . . .'"

In the very recent case of *Smith v. Skagit County*, 75 W.D.2d 729, 453 P.2d 831 (Wash. 1969), where the Planning Commission of Skagit County granted a private hearing to a company interested in establishing itself in

that county and interested in the ultimate zoning relative to the hearings before the Planning Commission, this court said at page 754:

> "The right to be heard implies a reasonable hope of being heeded. The right to be heard in a public hearing contemplates that, although the legislative body may, in finally deciding the matter, draw upon all kinds and sources of information including the opinions of experts, the hearing must be conducted as to be free from bias and prejudice; it must not only be open-minded and fair, but must have the appearance of being so. The word *hearing* in a statute shows a manifest purpose to afford due process of law. *Shields v. Utah Idaho Central R.R.*, 305 U.S. 177, 83 L. ed. 111, 59 S. Ct. 160 (1938)."

In the case of *Saks & Co. v. City of Beverly Hills et al.*, 107 C.A.2d 260, 237 P.2d 32, 36 (Cal. 1951), the court said:

> ". . . It is to be noted that there was a requirement that there be a regular public hearing before the variances could be revoked. A public hearing contemplates a fair and impartial hearing at which competent evidence may be presented before a fair and impartial tribunal."

The case of *Mills v. Town Plan and Zoning Commission of the Town of Windsor*, 144 Conn. 493, 134 A.2d 250, 253 (Conn. 1957), summarizes the law of fair hearing as follows:

> "Public office is a trust conferred by public authority for a public purpose. The status of each member of the commission forbids him from placing himself in a position where private interests conflict with his public duty. It is the policy of the law to keep the official so far from temptation as to ensure his unselfish devotion to the public interest. He must not be permitted to let personal interests conflict with his public duty. The question becomes pri-

> marily one of public policy. The modification of zoning regulations partakes of the nature of a legislative proceeding; nevertheless, it is not legislative in the broad sense; on the contrary, the power emanates from a specific grant and the manner of its exercise is limited. The mode of exercising the power thus expressly granted must be reasonable. The exercise of power of that nature, whether it be denominated legislative or quasi-judicial, should command the highest public confidence, since zoning restrictions limit a person's free use of his real estate in the interest of the general public good. Anything which tends to weaken public confidence and to undermine the sense of security of individual rights which a citizen is entitled to feel is against public policy. The persuasiveness of the arguments made by Mooney and Thompson in influencing their associates is unknown and need not be known. *Low v. Madison*, 135 Conn. 1, 8, 60 A.2d 774; Maltbie, 'The Legal Background of Zoning,' 22 Conn. B. J., pp. 2, 6, 9. Public policy cannot tolerate these proceedings. The record before us presents, not a possibility of disqualification, but its actuality. The action of the defendant commission was invalid."

In *Faxe v. Grandview*, 48 Wn.2d 342, 294 P.2d 462 (1956), our court stated that with reference to Article I, Section 12 of the State Constitution:

> ". . . The aim and purpose of this constitutional provision is to secure equality of treatment to all persons without undue favor on the one hand or hostile discrimination on the other."

Inherent in zoning is the reluctance of the court to examine closely the nature and quality of the decision of the municipality for fear that there may be some conflict in the divisions between the legislative and the judicial branches of the government. Zoning, is therefore, primarily the duty of the City, but in zoning it has no

right to flagrantly disregard the valuable constitutional protection, and we look to the court as our last bulwark against local autocracy and an abuse of due process.

Mr. Justice Brandeis in a concurring opinion in *St. Joseph Stock Yards Co. v. U.S.*, 298 U.S. 38, 73 (1938), stated:

> ". . . The inexorable safeguard which the due process clause assures is not that a court may examine whether the findings as to value or income are correct, but that the trier of the facts shall be an impartial tribunal; that no finding shall be made except upon due notice and opportunity to be heard; that the procedure at the hearing shall be consistent with the essentials of a fair trial; and that it shall be conducted in such a way that there will be opportunity for a court to determine whether the applicable rules of law and procedure were observed."

To consider the zoning of petitioners' property, the appointment of this hostile Planning Commissioner destroyed any semblance of impartiality in the hearing. It provided, however, a hearing in which the Commissioner acted as prosecutor, witness and judge. Further, the acknowledged conflict of interest of this individual would, of itself, have been sufficient to disqualify him and prevent his participation. The bias and prejudice of the Commissioner and the men who appointed him was apparent in this case. Such a hearing could not be fair in substance or fair in appearance.

The petitioners were denied the right guaranteed them under the Constitution for a fair hearing, and ask that the City be required to recognize those basic rights in determining local problems involving property rights.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of the State of Washington.

Respectfully Submitted,

T. M. ROYCE
Attorney for Petitioners

H. S. SANFORD
Of Counsel

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CHESTNUT HILL COMPANY, a Washington corporation; DELTA REHABILITATION CENTER, INC., a Washington Corporation,

Appellants,

v.

CITY OF SNOHOMISH, a municpal corporation; THE CITY COUNCIL OF THE CITY OF SNOHOMISH, consisting of the following: EARLE RHOADES, ELMER SURSLEY, WILLIAM CONNOR, GEORGE HUFF, MAX WEED, OTTO KUHLMAN, HAROLD ROTHGEB, OTTO WIRSCHING, Mayor; and the PLANNING COMMISSION for the CITY OF SNOHOMISH, consisting of the following: EARLE RHOADES, RANDY DAWSON, MAX FORD, WILLIAM BATES, EARL HEIPORT, KENNETH F. SCHILATY, JESS BEASLEY and FRANK CARR, Chairman,

Respondents.

No. 39750
EN BANC

FILED Sept. 18, 1969.

McGOVERN, J. — Appellants prosecute this appeal from an order dismissing a writ of certiorari directed to the city of Snohomish and its city council following the enactment of that city's ordinance No. 987. The result of the ordinance was a zone classification of R-2 for appellants' property, thus permitting the operation of a nursing home thereon subject to a conditional use permit. Appellants sought an R-3 classification which would have allowed them to operate the home without the necessity of a permit.

Prior to purchase by the appellants in the year 1955, the property involved in this proceeding was used by the state of Washington as a tuberculosis hospital. Since then, appellants have operated a nursing home on the premises under authority of a state license. Additionally, they have admitted former mental patients to the home for purposes of assisting them in their social rehabilitation efforts.

The property in question is rectangular in shape, fronting on Terrace Avenue to the west and on a county road to the east. It is 660 feet wide and 1,386 feet deep. Until annexed by the city of Snohomish, all of its outer boundaries adjoined county property, except for a 300-foot wide area extending along its southern border, running easterly from Terrace Avenue. Along that stretch of land it adjoined the city to the south.

Property to the west was zoned rural residential 9600 by Snohomish County. A low density residential development is thus permitted, as is the operation of a nursing home subject to a conditional use permit. Mr. K. L. Schilaty resides in that area in one of the single family residences.

The 300-foot wide strip of city property adjoining appellants' land to the south has been improved with homes since about 1960 and is zoned R-1 (single family residence). Other property to the south is undeveloped. To the north of appellants' land is undeveloped acreage and to the east is an industrial area.

July 21, 1964, when appellants' property was located outside the city limits, ordinance No. 955, a compre-

hensive zoning law, was adopted by the city of Snohomish.

May 4, 1965, at appellants' request, its property was annexed to the city of Snohomish by ordinance No. 974.

June 17, 1965, the city planning commission recommended to the city council that appellants' property be zoned R-2.

July 22, 1965, the city council gave notice of public hearing for the purpose of considering recommendations of the planning commission.

August 3, 1965, a public meeting of the city council regarding proposed ordinance No. 987 was held.

November 15, 1965, a new definition of nursing homes was recommended by the planning commission and, on January 18, 1966, adopted by the city council.

February 1, 1966, ordinance No. 987 was adopted by the city council. By its terms, the westerly 128 feet of appellants' property was zoned R-1 (single residence), and the remainder zoned R-2 (multiple residence), permitting the operation of a nursing home subject to a conditional use permit.

Petition for writ of certiorari to the Superior Court in Snohomish County resulted and this appeal followed its denial.

Appellants' assignments of error basically contend that: (1) comprehensive zoning ordinance No. 955 is void in that the city failed to adopt a comprehensive plan prior to the adoption of the ordinance; (2) ordinance No. 987 is void as arbitrarily and capriciously adopted, not related

to the general welfare of the community and as based on a void ordinance, No. 955; (3) the appointment of K. F. Schilaty to the planning commission was an abuse of the city's police powers and deprived the appellants of a fair, honest, and impartial hearing; (4) ordinance No. 996 redefining "nursing homes" and amending ordinance No. 955, is void for failure of the city to publish notice of public hearing concerning it, and because it is discriminatory as to appellants.

The record indicates that the Snohomish City Council adopted a comprehensive zoning plan for the city on October 31, 1961. That plan was in the form of a large map of the city, scaled to size. The zoning classification of each area within the city was indicated on the map by the color ascribed to the area. A copy of that comprehensive plan map, bearing the necessary legend for purposes of identifying the zoning classifications by color, was, after adoption, filed in the office of the Snohomish County Auditor. The plan was made available to the trial court at the time of the hearing. A copy of zoning ordinance No. 955, the city's comprehensive zoning ordinance, was also produced for the court. Its extensive provisions covering the various zoning classifications, standards, permissive uses and other pertinent matters was obviously designed with the comprehensive planning map in mind. In fact the ordinance makes direct reference to the plan. Upon examining the map and the ordinance, the zoning classification of any and all property located within the city, the uses permitted, the restrictions attached to them, and the effect of such restrictions on the property is quickly ascertainable.

In *Shelton v. Bellevue,* 73 W.D.2d 27, 36, 435 P.2d

949 (1968), we stated:

> [W]e turn to what we deem to be the two decisive questions posed by the contentions of the parties in the instant appeal, namely: (1) Is the formal, written articulation and adoption of a comprehensive municipal plan, as distinguished from a comprehensive zoning regulation, a condition precedent to the enactment of a valid zoning regulation? and (2) . . . .
>
> We think both questions must be answered in the negative.
>
> The negative answer to the first question flows logically from our conclusion in the case of *City of Medina v, Rose, supra* [69 Wn.2d 448, 418 P.2d 462 (1966)], wherein we held that a comprehensive zoning regulation could, by itself, reveal and constitute a comprehensive zoning plan, so long as it was "definite, certain, precise and clear in its terms and gave notice of its restrictions" and was "geographically comprehensive." As we have heretofore indicated, this approach is in accord with the view adopted by other courts. *See,* for example, *Kozesnik v. Montgomery Township, supra* [24 N.J. 154, 131 A.2d 1 (1957)]; *Angermeier v. Borough of Sea Grit,* 27 N.J. 298, 142 A.2d 624 (1958); *Higginbotham v. City of the Village,* 361 P.2d 191 (Okla. 1961); and also Haar, *In Accordance with a Comprehensive Plan, supra* [68 Harv. L. Rev. 1154 (1955)]. Furthermore, we are of the opinion that the pertinent sections of R.C.W. 35.63 do not compel the formal adoption of a specific and separately articulated comprehensive plan by the legislative body of a municipality.

Based on the foregoing we hold that the comprehensive zoning map and ordinance No. 955 meet the requirements of R.C.W. 35.63 and that the assignment of error is without merit.

Appellants' next contention relates to the validity of

ordinance No. 987, zoning their property R-2. They contend that it was first necessary to amend comprehensive zoning ordinance No. 955 so as to include appellants' property, and that the city failed to do so. The record reveals that ordinance No. 955 was amended by the adoption of ordinance No. 987. The latter provides in part:

> Sec. 3. The City Council hereby directs that the zoning map of the City be amended by the addition thereto of the area as described in, and zoned as determined in, Sec. 2 above under the direction of the City Clerk.

Section 2 described appellants' property. There is no merit to the assignment of error. The concurrent amendment was sufficient.

Appellants then insist that there was no showing that ordinance No. 987 was related to the general welfare of the community and is therefore void. They also contend that the city was arbitrary and capricious in adopting it. It is urged that the necessity of procuring a conditional use permit substantially reduces the value of their property because without change in the ordinance, or reclassification of the property, they will be allowed to operate the nursing home for only 25 years on the conditional use permit.

In *State ex rel. Myhre v. Spokane*, 70 Wn.2d 207, 210, 422 P.2d 790 (1967), we explained that

> [z]oning is a discretionary exercise of police power by a legislative authority. *Lillions v. Gibbs*, 47 Wn.2d 629, 289 P.2d 203 (1955). Courts will not review, except for manifest abuse, the exercise of legislative discretion. *State ex rel. Smilanich v. McCollum*, 62 Wn.2d 602, 384 P.2d 358 (1963). Mani-

fest abuse of discretion involves arbitrary and capricious conduct. Such conduct is defined to be without consideration and in disregard of the facts. *State ex rel. Lopez-Pacheco v. Jones,* 66 Wn.2d 199, 401 P.2d 841 (1965); *State ex rel. Cosmopolis Consol. School Dist. No. 99 v. Bruno,* 61 Wn.2d 461, 378 P.2d 691 (1963). One who asserts that a public authority has abused its discretion and is guilty of arbitrary, capricious, and unreasoning conduct has the burden of proof. *State ex rel. Lopez-Pacheco v. Jones, supra; State ex rel. Longview Fire Fighters Union, Local 828 v. Longview,* 65 Wn.2d 568, 399 P.2d 1 (1965). If the validity of the legislative authority's classification for zoning purposes is fairly debatable, it will be sustained. *Euclid v. Ambler Realty Co.,* 272 U.S. 365, 71 L. ed. 303, 47 Sup. Ct. 114, 54 A.L.R. 1016 (1926).

With these rules in mind, the factual matters involved should be considered. The record furnished the trial court included among other things the minutes of the city council and planning commission meetings, letters sent to those bodies by both opponents and proponents of the issue, exhibits and affidavits of counsel and their arguments. The record indicates that the issue was vigorously discussed and argued throughout the community; appellants even commenced a different lawsuit against Mr. Schilaty and others. At one of the council meetings one witness threatened to sue another and at the certiorari hearing in the Superior Court, Mr. Schilaty and others unsuccessfully sought to intervene. One attorney involved in the action complained "[t]hat the attack made against Delta included such animosity against me that it seriously affected the conduct of my profession as a lawyer in the City of Snohomish." The local newspaper carried a running account of the proceedings and the public, if not

directly involved, was at least well aware of all that transpired.

The primary concern of opponents to appellants' application seems to have been the rehabilitation program conducted by appellants. This program involved the rehabilitation of not only the physically handicapped, but also included a number of people with a history of emotional problems. Some of them had been confined to state mental hospitals but released as not being dangerous. They had recovered to some extent, but were in need of further assistance and rehabilitation. The protestors attributed several unfortunate, and what they described as dangerous and frightening incidents, to some of appellants' patients.

Witnesses were heard on both sides of the issue, including some doctors in the community who believed that appellants' operation was a highly desirable and worthwhile program for the community. Meetings were held by the planning commission and the city council and people had an opportunity to express themselves either for or against the zoning application. Following all of this, the city council gave as its reasons for the adoption of ordinance No. 987:

> [U]nder an R3 classification, and resultant lack of limitations, restrictions or control thereof by the City of Snohomish would be inadvisable and contrary to the health, safety and welfare of the residents of the surrounding area and contrary to the long term development of the area as residential, which the City Council finds to be its best ultimate use.

It is apparent that the issue involved was, to say the least, debatable. And we cannot say that it is either an

abuse of discretion or arbitrary and capricious conduct upon the part of public officials to accept the conclusions of proponents of an honestly debatable issue, as was this. Additionally, the burden of proof is on the appellants to prove their charge, and they have not sustained that burden. *State ex rel. Myhre v. Spokane, supra.*

Appellants' next assignment of error relates to the appointment of Mr. Schilaty to the planning commission. At the time of appellants' petition for annexation, and at all times subsequent thereto, Mr. Schilaty publicly opposed appellants' efforts. He was not a resident of the city of Snohomish and his home was located directly across the street from appellants' property. His interest in the proceedings was of a highly personal nature. In spite of this he was nonetheless appointed to the city planning commission. Appellants attempted to have him disqualify himself or be disqualified, to no avail. As a member of the planning commission Mr. Schilaty voted to have appellants' property zoned R-1 (single family residence). The commission, however, voted to recommend that appellants' property be zoned R-2 (multiple family residence with the nursing home permitted upon obtaining a conditional use permit). At the city council meeting when appellants' application was considered, Mr. Schilaty again appeared and publicly argued for a total R-1 classification—again to no avail.

Mr. Schilaty's official position was that of a member of the 11-man planning commission, a governmental body whose recommendations to the city council are not binding. In fact, the planning commission refused to follow Mr. Schilaty's recommendation of an R-1 classification for

all of appellants' property. When he appeared before the city council and expressed his views, that appearance constituted nothing more than a minority report of the planning commission.

Both the appointment of Mr. Schilaty to the planning commission and his refusal to disqualify himself from the commission hearings were inappropriate. He was an outspoken, vigorous opponent of appellants' petition, yet was a participating member of the municipal body that had the responsibility of recommending action to be taken by the city council. That participation by him raises the issue of whether appellants were afforded a fair hearing.

Appellants refer us to a series of cases standing for the general proposition that a member of a governmental body who has a direct personal interest in a matter pending before that body may not vote on the matter without invalidating the measure. *See Smith v. Centralia,* 55 Wash. 573, 104 Pac. 797 (1909); *McNamara v. Borough of Saddle River,* 64 N.J. Super. 426, 166 A.2d 391 (1960); Annot., 133 A.L.R. 1257 (1941). *And compare S & L Associates, Inc. v. Washington Township,* 61 N.J. Super. 312, 160 A.2d 635 (1960). Those cases are not determinative. Since Mr. Schilaty was not a member of the city council and had neither the right to participate in its deliberations nor cast a vote in its determination, the principle enunciated in those decisions is not applicable.

Our review of the record also satisfies us that the enactment of ordinance No. 987 was sufficiently related to the general welfare of the city of Snohomish so as to justify its adoption and was not the product of arbitrary and capricious conduct by the city council. The existing

presumption of proper and regular conduct by the city's legislative body was not effectually rebutted. *Bishop v. Town of Houghton*, 69 Wn.2d 786, 420 P.2d 368 (1966).

And, finally, appellants argue that ordinance No. 996 was adopted by the city without the necessary publication of notice of hearing before the planning commission and is therefore void. An examination of the record indicates otherwise. Notice of the commission hearing to be held on November 15, 1965, was published on November 6, 1965, as required by the ordinance being amended. Notice of the public hearing to be held by the city council on January 4, 1966, concerning possible amendments to the ordinance, was published on December 23, 1965.

Nor is ordinance No. 996 discriminatory. It applies equally to all nursing homes within the city. *See State ex rel. Smilanich v. McCollum*, 62 Wn.2d 602, 384 P.2d 358 (1963).

In appearance, procedure and substance, appellants were afforded due process. The remaining assignments of error are equally without merit.

The judgment is affirmed.

s/HUNTER, C. J.
s/HILL, J.
s/FINLEY, J.
s/WEAVER, J.
s/ROSELLINI, J.
s/MCGOVERN, J.
s/HAMILTON, J.
s/HALE, J.
s/NEILL, J.